

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

APR 14 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2009-0404-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
BRYAN LAMAR BOOKER,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-57208

Honorable Stephen C. Villarreal, Judge

REVIEW GRANTED; RELIEF DENIED

Bryan Lamar Booker

San Luis
In Propria Persona

H O W A R D, Chief Judge.

¶1 Following a 1998 jury trial, petitioner Bryan Booker was convicted of first-degree murder and drive-by shooting. After this court reversed his convictions on appeal, he was retried in 2000 and again found guilty by a jury. The trial court sentenced him in November 2000 to a term of life imprisonment for first-degree murder and to a lesser, concurrent term for drive-by shooting. The court enhanced both sentences by adding two

years to each term after finding Booker had committed the offenses while on release for another, pending felony charge.

¶2 On appeal, we affirmed his convictions and sentences but vacated the two-year sentence enhancements imposed pursuant to former A.R.S. § 13-604(R) after concluding Booker had been entitled to have a jury determine his release status. *State v. Booker*, No. 2 CA-CR 2000-0517 (opinion filed Sept. 12, 2002, depublished Apr. 22, 2003). Booker subsequently petitioned our supreme court for review. In light of its intervening decision in *State v. Thompson*, 204 Ariz. 471, 65 P.3d 420 (2003), the supreme court ordered our opinion depublished and remanded the case for us to reconsider the issue of premeditation in light of *Thompson*. See *State v. Booker*, 205 Ariz. 70, 66 P.3d 1247 (2003). We later issued a supplemental decision, replacing our previous discussion of the premeditation issue with a new analysis but otherwise affirming our decision and ratifying the disposition ordered. *State v. Booker*, No. 2 CA-CR 2000-0517 (supplemental memorandum decision filed Feb. 23, 2005).

¶3 In April 2009, Booker obtained leave of court to file a delayed petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. In a pro se petition, he asserted claims of ineffective assistance of trial and appellate counsel. After briefing was complete, the trial court denied relief in a detailed minute entry, and this petition for review followed. We will not disturb the trial court's denial of post-conviction relief unless the court has clearly abused its discretion. *State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006).

¶4 As set out in our supplemental memorandum decision, the essential underlying facts are these:

In 1997, Booker and a passenger drove to a convenience store, where Booker had an argument with the victim. Booker returned to the car, reached for something under the driver's seat, then got into the car and shut the door. He backed the car out of the parking space, stopped for approximately fifteen seconds, and slowly drove toward the victim. As he neared the victim, Booker stopped the car. Five gunshots were fired from the car's passenger window, one of which struck and killed the victim. One witness testified that she had seen Booker fire the shots.

¶5 Because the evidence at trial left room to question whether it had been Booker or his passenger who had actually fired the shots, the jury was instructed on the law of accomplice liability. During their deliberations, the jurors posed questions to the court concerning accomplice liability and the meaning of criminal accountability.

¶6 Booker's first assertion of ineffectiveness by trial counsel was that counsel had not adequately understood the facts of the case and the applicable law, as evidenced by the positions he had taken in response to the jurors' questions. Second, Booker argued trial counsel had been ineffective for having successfully moved to preclude any evidence of the parties' gang associations, including evidence of an apparently gang-related "gesture of disrespect" the victim had made immediately before the shooting. Booker contends that evidence would have helped establish the shooting had been a sudden, impulsive response to that gesture, rather than a premeditated act. Third, he argued trial counsel's failure to present evidence and argue to the jury about the lesser-included

offenses on which counsel had persuaded the court to give instructions likewise fell below the applicable standard of care.¹ He also contended appellate counsel had rendered ineffective assistance by not raising as an appellate issue the exclusion of evidence of the alleged gang gesture that, Booker contends, had precipitated the sudden, unpremeditated shooting.

¶7 The trial court ruled Booker had failed to state a colorable claim of ineffective assistance of either trial or appellate counsel, finding that he had shown neither deficient performance nor resulting prejudice. *See generally Strickland v. Washington*, 466 U.S. 668, 687 (1984). Because the court adequately and correctly described, discussed, and resolved Booker’s claims, we need not revisit its detailed minute entry. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has correctly ruled on issues presented “in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court[’]s rehashing the trial court’s correct ruling in a written decision”). None of Booker’s arguments persuade us the trial court erred in its minute entry or abused its discretion in denying relief.

¹The state attached to its response to the petition for post-conviction relief below the affidavit of Booker’s trial counsel, who avowed that his decisions to exclude evidence of gang involvement from the trial and to argue his client’s innocence, rather than urging the jury to find him guilty of a lesser-included offense, were strategic decisions. Further, counsel averred, it had been his legal judgment that supplying answers to the jury’s questions about accomplice liability would not have benefitted Booker.

¶8

Although we grant the petition for review, we deny relief.

/s/ *Joseph W. Howard*

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ *Philip G. Espinosa*

PHILIP G. ESPINOSA, Presiding Judge

/s/ *Virginia C. Kelly*

VIRGINIA C. KELLY, Judge